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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/763,015	01/22/2004	Peter Ashwood Smith	38898-0140 121-009	6501

  

34845	7590	04/01/2009
Anderson Gorecki & Manaras LLP		
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EXAMINER	
HO, DUC CHI	

  

ART UNIT	PAPER NUMBER
2419	

  

NOTIFICATION DATE	DELIVERY MODE
04/01/2009	ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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<b>Office Action Summary</b>	<b>Application No.</b> 10/763,015	<b>Applicant(s)</b> ASHWOOD SMITH ET AL.	
	<b>Examiner</b> DUC C. HO	<b>Art Unit</b> 2419	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 3-12-09.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-7 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-7 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

***Response to Amendment***

1. Applicant's request for reconsideration of the finality of the rejection of the last Office action is persuasive and, therefore, the finality of that action is withdrawn.

***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103© and potential 35 U.S.C. 102(f) or (g) prior art under 35 U.S.C. 103(a).

4. Claims 1-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brahim (US 2003/0147402), in view of figures 1-2, paragraph 0036-0045, of the Admitted Prior Art of the instant application, hereinafter referred to as the APA.

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Regarding claim 1, Brahim discloses technique for implementing a multi-service packet and optical/TDM virtual private cross-connect. The VPXC (virtual private cross-connect) 510-fig.5 is a cross-connect device, and also functions as a switch fabric since it could switch signals from one site to another, see 0024 (corresponding to a switch fabric). The VPXC is connected to provider edge PE 502/504-fig.5, which comprise routers, i.e. VR 520A and VR 526-fig.5. These routers provide control for the switching fabric VPXC 510-fig.5, see 0037 (corresponding to router control providing control for said switching fabric). In other words, the system comprising PE 502/504 & VPXC 510-fig.5 has both cross-connect and routing functionality, see 0030-0034, 0037.

Brahim, however, does not expressly teach at least one of the switching elements being connected to at least one of the routing elements by the switching fabric.

The APA discloses a switches 10-fig.2, each comprising a plurality of switching elements, connect to routers 348-fig.2. In other words, the matrix of switching 10 and routing elements 34 has at least one switching element connected to at least one routing element.

At the time of the invention, it would have been obvious to a person of ordinary skill in the art to combine the matrix of switching 10-fig.2 and routing elements 34-fig.2, which has at least one switching element connected to at least one routing element as taught by the APA into the system of Brahim. The suggestion/motivation for doing so would have been to provide a virtual private cross-connect and routing network for

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supporting a plurality of sites associated with the network, with functions of routing and cross-connect between the virtual private cross-connect and routing and each site.

Regarding claim 2, in Brahim the apparatus VPXC-fig.3 can support GMPLS, see 0031.

Regarding claim 3, in Brahim the apparatus VPXC 510-fig.5 includes IP-based layer virtual router, see 0037.

Regarding claim 4, in Brahim the apparatus VPXC 510-fig. 5 is able to provide layer -3VPN service to the VPNs, i.e. VPN 540/546.

Regarding claim 5, in Brahim the apparatus VPXC 510-fig.5 is able to perform layer-3 forwarding via a network processor.

Regarding claim 6, the apparatus VPXC 510-fig.5 is able to exist both physically and virtually within a particular network.

Regarding claim 7, the apparatus VPXC 510-fig.5 comprising routers, i.e. VR-A 520-fig.2, that is capable of forwarding packets according to a label switching algorithm.

### ***Response to Arguments***

5. Applicant's arguments filed 3-12-09 have been fully considered but they are not persuasive. The system comprising PE 502/504 & VPXC 510-fig.5 has both cross-connect and routing functionality, see 0030-0034, 0037.

### ***Conclusion***

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6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Duc Ho whose telephone number is (571) 272-3147. The examiner can normally be reached on Monday through Thursday from 7:30 am to 6:00 pm.

If attempt to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jay Patel, can be reached on (571) 272-2988.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (571) 272-2600.

The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

7. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Patent Examiner

/DUC C HO/

Primary Examiner, Art Unit 2419

03-24-09

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